

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

David Richard Walker, Jr., #188417)	C/A No. 8:14-996-JMC-JDA
)	
Plaintiff,)	REPORT AND RECOMMENDATION
vs.)	
)	
Doctor William Miles; Correct Care Solution,)	<i>for partial disposition</i>
)	
Defendants.)	
)	

David Richard Walker, Jr. (“Plaintiff”), proceeding pro se, brings this civil action pursuant to 42 U.S.C. § 1983. Plaintiff is detained at the Lexington County Detention Center (“LCDC”), and he files this action *in forma pauperis* under 28 U.S.C. § 1915. Defendant Correct Care Solution should be summarily dismissed from this action without service of process.

Background

Plaintiff alleges his constitutional rights have been violated during his detention at the LCDC based on deliberate indifference to his serious medical needs.¹ [Doc. 1 at 1–5; Doc. 17 at 1–3.] He alleges that Doctor William Miles (“Miles”) is a physician at LCDC providing health care to detainees, and Miles is employed by a business named Correct Care Solution. *Id.* Plaintiff gives an address in Nashville, Tennessee for Correct Care Solution. *Id.* This Court takes judicial notice that Correct Care Solutions holds itself out to be a provider of healthcare services to inmates, and its home office is located in Nashville, Tennessee. See Correct Care Solutions Homepage,

¹ In the Complaint, Plaintiff alleges factual allegations related to acts or omissions by Doctor William Miles. This Court does not set forth those facts in detail herein because service of process is authorized for Miles. Thus, only the pertinent facts related to Defendant Correct Care Solutions are set forth herein.

<http://www.correctcaresolutions.com/contact-us> (last visited April 15, 2014). Plaintiff alleges he has several different physical ailments that are being ignored, and he is in extreme constant pain. [Doc. 1 at 1–5; Doc. 17 at 1–3.] He seeks damages, a transfer to a different facility in order to receive medical care, and an order that he be permitted to visit outside doctors and specialists for treatment. *Id.* Further, he requests immediate preliminary injunctive relief that he be permitted to visit outside doctors and specialists for treatment. [Doc. 17 at 1–2.]

Standard of Review

Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff is a prisoner under the definition in 28 U.S.C. § 1915A(c), and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this Court is charged with screening Plaintiff’s lawsuit to identify cognizable claims or to dismiss the Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

As a pro se litigant, Plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, a portion of the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the Court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff's legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or "conjure up questions never squarely presented" to the Court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the Court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

Discussion

The Complaint is filed pursuant to 42 U.S.C. § 1983, which "is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 "creates a private right of action to vindicate violations of 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Rehberg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured

by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Correct Care Solutions should be dismissed because Plaintiff fails to state a claim on which relief may be granted against it pursuant to § 1983. Plaintiff does not allege that it personally committed misconduct against him. Instead, it appears Plaintiff brings suit against Correct Care Solutions solely based on its status as the employer of Miles, who is alleged to have committed misconduct. However, pursuant to § 1983, a person cannot be liable merely because he employed another person. The doctrines of vicarious liability and respondeat superior are not applicable in § 1983 actions. See *Connick v. Thompson*, 131 S. Ct. 1350, 1359 (2011) (a local government cannot be vicariously liable for its employees' actions); *Polk Cnty. v. Dodson*, 454 U.S. 312, 325 (1981) ("Section 1983 will not support a claim based on a respondeat superior theory of liability."). Even if Plaintiff is attempting to sue the staff of Correct Care Solutions, he still fails to state a cognizable claim because groups of people are not amenable to suit under § 1983. See *Harden v. Green*, 27 F. App'x 173, 178 (4th Cir. 2001) (finding that the medical department of a prison is not a person pursuant to § 1983); *Dalton v. South Carolina Dep't of Corr.*, C/A No. 8:09-260-CMC-BHH, 2009 WL 823931, at *2 (D.S.C. March 26, 2009) (dismissing the medical staff of SCDC and Prison Health Services as defendants because they were not persons). Thus, Correct Care Solutions should be dismissed.

Recommendation

It is recommended that the District Court dismiss Defendant Correct Care Solution from this action *without prejudice* and *without issuance and service of process*. See *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal). This action remains pending, and service of process is authorized for Defendant Miles. **Plaintiff's attention is directed to the important notice on the next page.**

s/ Jacquelyn D. Austin
United States Magistrate Judge

April 16, 2014
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).